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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91206026
Party	Defendant Shurjoint Piping Products, Inc.
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Attachments	Motion for Involuntary Dismissal.PDF(270888 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Victaulic Company of America,

Petitioner,

v.

Shurjoint Piping Products, Inc.

Respondent.

Opposition No.: 91206026  
Serial No.: 85-502,864

**RESPONDENT’S MOTION FOR INVOLUNTARY DISMISSAL FOR FAILURE TO  
TAKE TESTIMONY**

Respondent, Shurjoint Piping Products, Inc (“Shurjoint”), by and through its undersigned counsel, moves, pursuant to TMBP §534.02 and 37 C.F.R 2.132(a), to dismiss Opposition No. 91206026, filed by Petitioner, Victaulic Company of America, (“Victaulic”) on the grounds that Victaulic has failed to prosecute this opposition action.

Victaulic’s course of conduct, namely, its failure to respond to Shurjoint’s Third Set of Requests for Admissions, despite being ordered to do so, and its failure to submit *any* evidence into the record, unequivocally demonstrates its utter lack of interest in prosecuting this opposition proceeding. This course of conduct confirms Shurjoint’s prior assertion that this opposition is a meritless abuse of process and was instituted by Victaulic to harass a long-time competitor, despite their decades-long co-existence.

As the opposer, Victaulic has the burden of proving priority and likelihood of confusion. *See Life Zone Inc. v. Middleman Grp. Inc.*, 87 USPQ2d 1953, 1960 (TTAB 2008) (“[u]nlike a case in which opposer properly introduces trademark registrations into the record it was opposer's burden to prove its priority of use by a preponderance of the evidence. Without

testimony or other evidence on this point, we cannot presume that opposer's use predates the filing date of the subject application, or indeed whether it even predates the filing of this opposition proceeding”) (citation omitted); *see also*, *Research in Motion Ltd. v. Defining Presence Mktg. Grp., Inc.*, 102 USPQ2d 1187, 1192 (TTAB 2012) (“[o]pposer must establish by a preponderance of the evidence that there is a likelihood of confusion”). As of January 26, 2014, the close of Victaulic’s trial period, Victaulic has not submitted an iota of evidence into the record through which this Board could find that Victaulic has satisfied either burden. *See Sanyo Watch Co., Inc. v. Sanyo Elec. Co., Ltd.*, 215 USPQ 833, 834 (Fed. Cir. 1982) (affirming dismissal of opposition proceedings wherein Opposer “wholly defaulted with respect to presenting any evidence” on the issue of priority); *see also*, *Demon Int’l LC v. Lynch*, 86 USPQ2d 1058, 1060 TTAB (2008) (“[b]ecause opposer did not submit proof of ownership and the issuance of its asserted registration, and applicant did not in its answer admit opposer's ownership of such registration, opposer has not satisfied its responsibility for proving its standing and removing priority as an issue in this case”). Indeed, Victaulic’s lack of interest manifested itself prior to the opening of its testimony period: Victaulic has still not responded to Shurjoint’s Third Set of Requests for Admissions, despite this Board’s denial of Victaulic’s Motion for A Protective Order.<sup>1</sup>

Shurjoint should not be forced to expend time and resources defending Victaulic’s frivolous and meritless opposition action, of which Victaulic has evidenced a dearth of interest in

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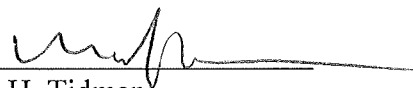
<sup>1</sup> Should the subject Motion for Involuntary Dismissal be denied, Shurjoint will be forced to endure this charade of a proceeding by filing a Motion to Compel Discovery, waiting for responses from Victaulic, seeking the institution of adverse inferences (if necessary) and presenting evidence during its trial period. This protracted charade should be avoided.

contesting.

For the foregoing reasons, Shurjoint respectfully requests that its Motion for Involuntary Dismissal for Failure to Take Testimony be granted and, should Victaulic fail to establish good and sufficient cause, requests that this opposition proceeding be dismissed with prejudice.

DATED: January 31, 2014

Respectfully submitted,

By: 

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Counsel for Respondent, Shurjoint Piping Products,  
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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 31<sup>st</sup> day of January a true copy of the foregoing RESPONDENT'S MOTION FOR INVOLUNTARY DISMISSAL FOR FAILURE TO TAKE TESTIMONY was served upon the following via first-class mail and e-mail to the following:

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By: Michael Hirsch  
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